

**APPENDIX D**

**PLAN OF THE  
UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF GEORGIA  
PURSUANT TO  
THE CRIMINAL JUSTICE ACT OF 1964, AS AMENDED**

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Pursuant to the provisions of Criminal Justice Act of 1964 (18 U.S.C. 3006A) as amended by the Act of October 14, 1970 (P.L. 91-447, 91st Cong., 84 Stat. 916), and by Title II of P.L. 98-473, 98 Stat. 1837, the Comprehensive Crime Control Act of 1984, the Judges of the United States District Court for the Northern District of Georgia have adopted, effective March 18, 1986, the following amended Plan for the adequate representation of any person, otherwise financially unable to obtain adequate representation:

- (1) who is charged with a felony or misdemeanor (other than a petty offense as defined in 18 U.S.C. § 1 (3)) or with juvenile delinquency by the commission of an act, which if committed by an adult, would be such a felony or misdemeanor or with a violation of probation, or
- (2) who is under arrest, when such representation is required by law, or
- (3) who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief, subject to the conditions of 18 U.S.C. 3006A (g) as amended, or
- (4) whose mental condition is the subject of a hearing pursuant to Chapter 313 of Title 18, United States Code, or
- (5) who is a person for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel. Representation shall include counsel and investigative, expert, and other services necessary for an adequate defense.

**I. Provision for Furnishing Counsel.**

A. This district plan provides for the appointment and compensation in all cases of private counsel who are panel members of the Federal Defender Program, Inc. (hereinafter referred to as "FDP"). FDP is a nonprofit defense counsel service and will administer the Criminal Justice Act in and for the court. Authority to generally administer the Criminal Justice Act is assigned and delegated to FDP in accordance with and subject to the provisions of this Plan and further orders of the court. In addition, this plan provides for the direct appointment of FDP which will furnish counsel as necessary when and if an application providing for the payment of sustaining grants to this organization is approved by the Judicial Conference of the United States under the terms of 18 U.S.C. § 3006(h) (B), as amended by P.L. 91-447.

B. The magistrate in his discretion will determine whether any party entitled to representation will be represented by the FDP, FDP panel attorneys or an attorney admitted pro hac vice pursuant to authorization of the court. Insofar as practicable, in at least 25 percent of the cases in which appointments of counsel are made, panel attorneys rather than FDP shall be designated. For the sole purpose of allocation of cases between FDP on the one hand, and panel attorneys of said organization on the other, a "case" shall be deemed to be each proceeding actually docketed in the United States District Court, and each "new trial" as defined in 18 U.S.C. § 3006A(d)(5).

## **II. Recognition of Federal Defender Program, Inc., a Community Defender Service.**

The court has determined that the use of FDP, a Community Defender Organization as defined in 18 U.S.C. § 3006A (h) (B), will facilitate the representation of persons entitled to the appointment of counsel under the Criminal Justice Act of 1964, as amended, and that the Northern District of Georgia is a district in which at least two hundred persons annually require the appointment of counsel pursuant to 18 U.S.C. § 3006A(h) (1), as amended, which section pertains to the qualifications necessary for the recognition of such a defender organization.

The court further finds that FDP, a Georgia not-for-profit corporation, whose by-laws are attached to this plan and incorporated herein by reference, is a non-profit defense counsel service established and administered to provide legal representation, and is otherwise eligible under the Criminal Justice Act of 1964, as amended, to qualify as the Community Defender Organization for the Northern District of Georgia.

Therefore, subject to: (1) the approval of this plan by the Judicial Council of the Eleventh Circuit, (2) approval of the application of FDP for periodic sustaining grants by the Judicial Conference of the United States, and (3) subject to the binding commitment of FDP to carry out all of the undertakings set forth in its applications, the court designates FDP as the Community Defender Organization of the Northern District of Georgia to act in that capacity beginning at such time as this court notifies the organization in writing that the above three conditions have been met. The court may nevertheless review the continued eligibility of FDP from time to time, and may at any time by order and on reasonable notice terminate the designation of FDP as the Community Defender Organization of the Northern District of Georgia.

FDP shall submit to the Judicial Conference of the United States at the end of each fiscal year a report on a form to be prescribed setting forth its activities and financial position, and also its anticipated caseload and expenses for the coming year which are

attributable to its activities as the Community Defender Organization for this district. A copy of this report shall at the same time be submitted to the chief judge of this court.

### **III. System of Appointment.**

A. FDP will be responsible for developing and maintaining a panel of attorneys who will be available for appointment to specific cases. The panel of attorneys will consist of private attorneys regularly practicing before the court who have demonstrated their professional responsibility, interest, and ability in criminal practice and in representing the legally indigent.

Application forms for panel membership shall be made available by FDP to any member of the bar upon request. Completed applications shall be submitted to FDP and shall be retained in the offices of FDP and made available upon request to judges or magistrates of this court.

FDP will distribute a copy of the panel of attorneys, upon approval, to each district judge and magistrate, as well as revised lists when necessary due to additions to or deletions from the panel.

Membership on the panel is conditioned upon a continued demonstration of proficiency, ability, and interest in representation of the legally indigent.

B. In addition to the regular panel of attorneys, there will be an Advisory Panel. This panel is to consist of leading attorneys regularly practicing criminal defense law before the court. Panel members will not be used for normal assignments, but rather will be available for specific appointments if and when, at the recommendation of FDP and with the approval of the judge or magistrate to whom the case is assigned, the interests of justice would be best served by the appointment of a specific member of the Advisory Panel.

Advisory Panel members will also serve, as needed, as advisors to panel and to *pro hac vice* attorneys and, more generally, as consultants to FDP.

#### **C. Admission of *Pro hac vice* Attorney.**

In exceptional circumstances, if the district judge presiding over the case, or the chief judge if a district judge has not yet been assigned to the case, determines that the appointment of an attorney, who is not a member of the FDP, the FDP panel of attorneys or the advisory panel of attorneys, is in the interest of justice, judicial economy or continuity of representation, or there is some other compelling circumstance warranting his or her appointment, the attorney may be admitted to the FDP panel *pro hac vice* and appointed to represent the defendant. The attorney, who may or may not maintain an office in the district,

must possess such qualities as would qualify him for admission to the FDP panel as is otherwise explained in Subtitle A, *supra*.

**D. List of FDP Staff Attorneys.**

FDP shall furnish to this court a list of the attorneys on its staff who will be subject to assignment as counsel for persons that the Community Defender Organization will represent under this Plan, including a certificate that such attorneys are competent to give adequate representation to parties under this Act. The court may from time to time make such inquiries and request such information as may be needed to insure effective and competent representation. Any change in this list of attorneys must be reported promptly to the court by way of a revised listing, similarly certified.

**IV. Determination of Need for Counsel.**

**A. Advice Prior to First Court Appearance.**

Prior to defendant's first scheduled court appearance, if it becomes known to a judge or magistrate, an assistant United States attorney, a deputy United States marshal, other law enforcement officers, or a representative of the Office of Probation, that the defendant desires representation by an attorney, but claims to be unable to afford such service, FDP shall be notified. If feasible, in order to conserve the time of the court, a panel or staff attorney of FDP shall then furnish the defendant with a written statement approved by the chief judge outlining his right to representation by counsel and to appointment thereof if he is unable financially to retain an attorney. If in the judgment of the panel or staff attorney of FDP, based upon inquiry of the defendant, the court or magistrate is likely to appoint counsel, with or without requiring payments by defendants toward the cost of such representation, said attorney shall assist in completing the CJA appointment form on which the defendant lists his income and assets.

**B. When Appearing Before a Magistrate or Court in a Criminal Case.**

In every criminal case in which the party is charged with a felony or misdemeanor or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation and appears without counsel, the magistrate or the court shall advise the party that he has the right to be

represented by counsel throughout the case and that counsel will be appointed to represent him if he so desires and is financially unable to obtain counsel.

Whenever the party states that he is financially unable to obtain counsel and desires the appointment of counsel, if the case is then pending before a magistrate, it shall be the duty of the magistrate to inquire into and to make a finding as to whether the defendant is financially able to obtain counsel. Relevant information bearing on the person's financial eligibility should be reflected on the appropriate CJA form, which shall be completed and executed before a judicial officer or employee. Employees of law enforcement agencies or United States attorney offices should not participate in the completion of the CJA form or seek to obtain information from a person requesting the appointment of counsel concerning his or her eligibility.

In addition to the income and assets of a defendant seeking the appointment of counsel, the judge or magistrate shall also consider in ruling on defendant's eligibility for such appointment the cost of providing the person and his dependants with the necessities of life, and the cost of his bail bond if financial conditions are imposed, or the amount of the cash defendant is required to make to secure this release on bond.

The person seeking appointment of counsel has the responsibility of providing the court with sufficient and accurate information upon which the court can make an eligibility determination. The prosecution and other interested entities may present to the court information concerning the person's eligibility, but the judicial inquiry into financial eligibility shall not be utilized as a forum to discover whether the person has assets subject to forfeiture, or the ability to pay a fine, make restitution, or compensate another person pursuant to the Victim/Witness Protection Act or other purposes not related to the appointment of counsel. Such determinations, if appropriate, shall be made at other stages of the proceedings in which the person seeking counsel is a party.

If the case is not pending before a magistrate, it shall be the duty of a judge to conduct such inquiry and to make such finding. An appointment may be made retroactive to include any representation furnished prior to such appointment as is otherwise explained in Subtitle C *infra*. The court or the magistrate shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel or when other good cause is shown.

### **C. Counsel for Person Arrested when Representation is Required by Law.**

Where a person arrested has been represented by counsel before his presentation before a judicial officer **under circumstances where such representation is required by law**, his counsel may subsequently apply to a judge or magistrate for approval of

compensation. If the judge or magistrate finds such person has been and is then financially unable to obtain an adequate defense and that such representation was required by law, the appointment will be made retroactive to cover out of court time expended by the attorney during the arrest period, and, in addition, cover compensation for services rendered from the time of his initial presentation before a magistrate, or the court, as the case may be. The court or magistrate may make retroactive appointment of counsel where such attorney will continue to represent such party in criminal proceedings in this court. If the person represented is unavailable at the time counsel applies to the court for approval of compensation for services rendered during the arrest period, the attorney may nevertheless submit his claim to the court for approval based on the arrestee's financial condition and a showing that such representation was required by law.

#### **D. Other Appointments as of Right.**

The court or magistrate may proceed as under Subtitle B above to make an appointment of counsel for a person (1) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or (2) for whom, in a case in which he faces loss of liberty, any federal law requires the appointment of counsel.

#### **E. Discretionary Appointments.**

Any person subject to revocation of parole, in custody as a material witness, or seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255, or 18 U.S.C. § 4245, may apply to the court or magistrate to be furnished representation based on a showing (1) that the interests of justice so require and (2) that such person is financially unable to obtain representation. Such application shall be verified and in such written form as is prescribed by the Judicial Conference of the for such purpose, act on the basis of the form alone, or the form as supplemented by such information as may be made available by an officer or custodian or other responsible officer, provided that such information is also made available to the party. The court or magistrate may approve such representation on a determination that the interests of justice so require and that such person is financially unable to obtain representation.

#### **F. Waiver of Right to Counsel.**

All waivers of right to counsel before a judge or magistrate shall be in writing on a form approved by the chief judge, shall be signed by the defendant, and shall be filed among the papers in the case. If a defendant knowingly waives his right to counsel, but refuses to

sign the waiver form, the judge or magistrate shall certify such fact to the clerk of court for inclusion in the file.

The judge or magistrate may appoint standby counsel to assist a person who is financially eligible for appointment of counsel but waives representation if the court determines that assistance of counsel is necessary to the person's defense or to protect the integrity and insure the continuity of the judicial proceedings.

A judge or magistrate shall explain to a defendant waiving the right to counsel that such waiver will not prevent a request for the appointment of counsel at a later time or before an other judicial officer.

## **V. Appointment of Counsel.**

### **A. The Magistrate.**

In every criminal case in which a party is charged with a felony or misdemeanor other than a petty offense or with violation of probation, and appears without counsel before a magistrate, it is the duty of the magistrate not only to advise the party of his right to counsel before the magistrate and throughout the case, but also promptly to appoint counsel to represent the party if the magistrate finds that the party is financially unable to obtain an attorney, unless the party waives his right to be represented by counsel. The magistrate shall similarly proceed in any proceeding as described in Subtitle D of Title IV above.

The magistrate shall in selecting and appointing such counsel either designate FDP itself, a private attorney selected from the appropriate panel, or a *pro hac vice* appointed attorney as approved by the court. The party shall not have the right to select his appointed counsel from the FDP staff, from its panel of attorneys, or otherwise.

Counsel appointed by a magistrate shall, unless excused by order, continue to act for the party throughout the proceedings, whether before a judge or magistrate. In the event that a criminal defendant is convicted following trial, counsel appointed hereunder shall advise the defendant of his right to appeal and of his right to counsel on appeal. If requested to do so by the defendant in a criminal case, counsel shall file a timely Notice of Appeal, and he shall continue to represent the defendant unless, or until, he is relieved by the district court or the Court of Appeals. If counsel appointed by a magistrate in any proceeding wishes to be relieved, he shall communicate his wish to the magistrate or judge before whom the case is then pending.

The magistrate before whom a case is pending may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings before him.

If at any time after the appointment of counsel, the magistrate finds that the party is financially able to obtain counsel or make partial payment for the representation, he may



terminate the appointment of counsel or order that any funds available to the party be paid as provided in 18 U.S.C. § 3006A(f).

If at any stage of the trial proceedings, the magistrate finds that the party is financially unable to pay counsel whom he had retained or to obtain other counsel, the magistrate may make an original appointment of counsel in accordance with the general procedure set forth in this Plan, which counsel may claim compensation for services rendered after such appointment.

A claim for compensation and reimbursement of expenses of appointed counsel shall be submitted on the prescribed CJA form to the magistrate. The magistrate shall examine each claim, and make a recommendation to the court as to the amount which the court should fix in accordance with the statute and this Plan, unless the matter is concluded before him, in which case the magistrate himself may approve the claim.

Counsel for a defendant charged with a minor offense, other than a petty offense, to be tried before the magistrate, shall submit all requests for investigative, expert, or other services to the magistrate. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the defendant is financially unable to obtain them, the magistrate shall authorize counsel to obtain such services on behalf of the defendant. The magistrate may, in the interests of justice, and upon a finding that timely procurement of necessary services could not await prior authorization, ratify such services after they have been obtained.

If a party having a right to counsel (i.e., where the appointment is not a matter of discretion) is not represented by counsel before the magistrate and waives his right to have appointed counsel, the magistrate shall present to the party a waiver of right to have appointed counsel, as provided in Subtitle F of Title IV of this Plan. If such party executes the waiver, the magistrate shall certify that fact in the record of the proceedings. If such party waives the right to have appointed counsel but refuses to execute such a waiver, the magistrate shall certify that fact in the record of proceedings. If such party admits or the magistrate finds that such party is financially able to obtain counsel but declines to do so, the magistrate shall certify that fact in the record of proceedings.

## **B. Federal Defender Program, Inc.**

It shall be the responsibility of FDP to insure the reasonable proration of appointments as between private panel attorneys and FDP staff attorneys. FDP shall provide the court and magistrates with such current statistical data as is necessary to insure the above recited proration of appointments.

If counsel has not been appointed by the magistrate or the appointment of such counsel has been terminated by that order, and FDP learns from the report of a judge or

magistrate, the United States attorney, the clerk, or from the party himself or otherwise, that a party having a right to counsel desires to have counsel appointed, then--

(1) if no affidavit of financial inability to employ counsel has been filed, FDP shall promptly send to the party a form of affidavit to be filled out by the party and returned to FDP;

(2) if the notice to FDP includes an affidavit of such financial inability to employ counsel or as soon as either receives such an affidavit, FDP shall promptly arrange for the appointment of counsel in the manner provided in section C of this Subtitle. If in similar circumstances FDP is apprised of the fact that a party as described in Subtitle E of Title IV of this plan desires to apply for a discretionary appointment of counsel, the appropriate CJA forms shall be sent promptly to such party to be executed and filed in accordance with said Subtitle E.

**C. Recognition of Georgia Appellate Practice and Educational Resource Center Inc., a Community Defender Organization.**

1. The CDO is authorized to provide representation, assistance, information, and other related services to eligible persons and appointed attorneys in connection with federal death penalty habeas corpus cases pursuant to subsection (g)(2)(B) of the Act. As provided in the Criminal Justice Act Plans for the Northern, Middle, and Southern Districts of Georgia, the CDO will provide such services in all three districts. The by-laws of the CDO are incorporated by reference and a copy of said by-laws shall be maintained by the clerk of court and attached to the original of this Plan. As used herein the term "eligible persons" means (a) a person who has been convicted in a Georgia state court and sentenced to death, or (b) a person who has been convicted in any other state, federal, or territorial court and sentenced to death, and who is eligible to institute an action for habeas corpus relief under 28 U.S.C. §§ 2241, 2254 or 2255 in a United States District Court in Georgia, and (c) any other convicted person eligible to institute such an action in a United States District Court in Georgia when the court before which such application is pending determines that such person requires the services of the CDO.

2. The CDO shall operate pursuant to the provisions of subsection (g)(2)(B) of the Act, the terms and conditions of the sustaining grant, and the Guidelines for the Administration of the Criminal Justice Act, (Volume VII, Guide to Judiciary Policies and Proceedings), promulgated by the Judicial Conference of the United States pursuant to subsection (h) of the Act.

3. The CDO shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and ex

penses for the next fiscal year. A copy of this report shall at the same time be submitted to the chief judge of this court.

4. The CDO shall furnish to this court its list of staff attorneys, and shall report any changes thereto to the court.

5. The primary responsibility of the CDO will be to assist the district courts in ensuring that adequate representation is provided to persons under death sentence who seek federal habeas corpus relief. Toward that end the CDO will perform the following functions:

(a) It shall monitor all capital litigation in the State of Georgia;

(b) It shall screen and recruit qualified private attorneys who are willing to provide representation in death penalty post-conviction proceedings in federal court, and shall submit a list of such attorneys to the court for approval as a "Special Death Penalty Habeas Corpus Panel";

(c) In each federal death penalty habeas corpus case in which the court has determined that counsel shall be appointed., the CDO shall provide to the court the name of the next three available members of the "Special Death Penalty Habeas Corpus Panel." The judges of the Northern District of Georgia retain the authority to appoint attorneys other than the attorneys submitted by the CDO, including (1) attorneys who have represented the inmate in prior habeas proceedings, (2) the Federal Public Defender, Inc. for the Northern District of Georgia, or (3) the CDO. If a judge decides it is in the interest of justice to appoint such an attorney, such appointment will be made only after thorough review and consultation with the Director of the CDO;

(d) It shall also be authorized to be appointed and serve as counsel of record, and shall recommend to the court those cases in which its appointment as counsel of record is appropriate;

(e) Upon request, made pursuant to subsection (e) of the Act and paragraph 3.16 of the Guidelines for the Administration of the Criminal Justice Act, of appointed or pro bono, counsel in a federal habeas corpus case, it shall provide consulting services in such areas as, but, not limited to, records completion, exhaustion of state remedies, identification of issues, review of draft pleadings, and briefs;

(f) To the extent appropriate it shall coordinate its resources with other state and national organizations providing legal assistance to death-sentenced inmates; provided, however, any expenditures made by it to any other such state and national organization will be limited to cases pending in the State of Georgia;

(g) It shall maintain a library, brief bank and repository of materials to assist attorneys involved in death penalty habeas corpus cases in this court; and

(h) It shall perform such other functions, services and tasks as may be necessary to ensure that adequate representation is provided to eligible persons in federal death penalty habeas corpus proceedings.

6. In order to ensure the effective supervision and management of its responsibilities, the CDO will be responsible for the assignment of cases to its staff attorneys. Accordingly, the court will assign cases in the name of the CDO rather than in the name of an individual staff attorney.

7. It shall be authorized to obtain investigative, expert, or other services, for cases pending in the State of Georgia, without regard to the requirements or limitations set forth in Article VI of this court's Criminal Justice Plan with respect to procurement of such services by panel attorneys, provided, however, that total expenditures of the CDO for investigative, expert, and other services shall not exceed its grant authorization for these services. In addition, the CDO must obtain prior approval of the court before expending more than fifty percent of any grant authorization for investigative, expert, or other services in any one case.

The provisions of this court's Criminal Justice Plan shall remain in full force and effect to the extent that it is not inconsistent with the provisions set forth in this Subtitle V.C., in which case the provisions of this Subtitle V.C. shall govern.

#### **D. The Judge.**

Whenever FDP, a panel, or *pro hac vice* attorney presents to a judge of this court a proposed order for the appointment of counsel for a party entitled as of right to counsel, and the judge is satisfied that the party desires counsel and is financially unable to employ counsel, the judge shall transfer the party's case to the magistrate for appointment of counsel or may make such appointment directly.

If a judge, the clerk, the United States attorney, other law enforcement officer, a Parole Board representative, FDP, an appointed attorney, or a representative of a bar association challenges the claimed financial inability of a party to employ a lawyer, the determination of the defendant's right to have appointed counsel shall be made by a judge or a magistrate appropriately designated by this court (as is otherwise explained in Title VI, Subtitle B, *supra*).

Whenever it shall appear to the presiding judge at the time of arraignment or at any other time, that a party entitled as of right to counsel is not represented by counsel and has not voluntarily waived the assistance of counsel, the judge shall determine whether such defendant is financially able to obtain counsel and, if not, whether he wishes the judge to appoint counsel for him. The judge may also make a discretionary appointment as provided in Subtitle E or Title IV. If in either situation the judge concludes that counsel should be appointed, either FDP will be designated or such appointment will be made from the appropriate FDP panel; provided, however, that in extraordinary situations, in the interest of

justice, the judge may appoint any member of the bar of this court to represent such party, as is otherwise explained in Title III, Subtitle C, *supra*.

The appointment of such counsel is the province of the judge or the magistrate. The party shall not have the right to select his appointed counsel from the attorneys of FDP or from the panel of FDP attorneys or otherwise.

Counsel appointed by a judge or magistrate or designated by FDP shall, unless excused by order of court, continue to act for the party throughout the proceedings in this court. In the event that a criminal defendant is convicted following trial, counsel appointed hereunder shall advise the defendant of his right to appeal and of his right to counsel on appeal. If requested to do so by such defendant, counsel shall file a timely Notice of Appeal, and he shall continue to represent the defendant unless, or until, he is relieved by the court to which the appeal is taken.

After conviction, if a defendant desires to waive his right of appeal, appointed counsel shall insure that such waiver is being made intelligently and voluntarily, shall obtain the signature of the defendant on a written waiver form to be approved by the chief judge, and shall cause the executed form to be filed with the other papers in the case.

A judge or magistrate may, in the interest of justice, substitute one appointed counsel for another at any stage of any proceeding in this court.

#### **E. Redetermination of Need.**

If at any stage of the proceeding, a judge or magistrate shall find that a party for whom counsel has not previously been appointed under this Plan, but who has retained his own attorney, is financially unable to provide for his continued representation, the judge or magistrate may appoint counsel for such party. The court will ordinarily not appoint the same attorney.

No appointed counsel may request or accept any payment or promise of payment for assisting in the representation of a defendant, unless such payment is approved by order of court or except under the circumstances set forth in Subtitle B of Title IV, *supra*.

If at any time after his appointment counsel should have reason to believe that a party is financially able to obtain counsel or to make partial payment for counsel, he shall advise the court. The court will then take appropriate action, which may include permitting assigned counsel to continue to represent the party with part or all the cost of representation defrayed by such defendant.

In such event, the amount so paid or payable by the party shall be considered by the court in determining the total compensation to be allowed to such attorney.

## **VI. Investigative, Expert, and Other Services.**

### **A. Upon Request.**

Counsel (whether or not appointed under the Criminal Justice Act) for a party who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense in his case may request such services in an ex parte application submitted to a judge before whom the case is pending, or before a magistrate if the services are required in connection with a matter over which the magistrate has jurisdiction (or if the judge otherwise refers such application to a magistrate for findings and report). In responding to requests for such services by a defendant represented by retained counsel, the court may inquire into the fee arrangement between the retained attorney and the defendant to determine whether the fee arrangement is reasonable in relation to fees customarily paid qualified practitioners in the community for services in criminal matters of similar duration and complexity. If the court determines that the fee arrangement was made with a gross disregard of the defendant's trial expenses, the court may order the attorney to pay out of such fees all or such part of the costs and expenses as the court may direct. Upon finding (after appropriate inquiry, if necessary, in such ex parte proceeding) that the services are necessary and that the person is financially unable to obtain them, the court, or the magistrate, as the case may be, shall authorize counsel or FDP to obtain the services. The judge or magistrate may establish a limit on the amount which may be expended or promised for such services within the maximum prescribed by 18 U.S.C. § 3006A(e)(3). Where practicable, the use of law students as investigators or interpreters is permitted.

### **B. Upon Request of *Pro se* Defendant.**

Persons who are eligible for representation under the Criminal Justice Act, but who have elected to proceed *pro se*, may, upon request, be authorized to obtain investigative, expert, and other services necessary for an adequate defense in their case. The court may authorize such services for *pro se* litigants and review and approve resulting claims in the same manner as is used with respect to requests made by FDP panel attorneys.

### **C. Without Prior Request.**

A counsel appointed under the Criminal Justice Act may obtain, subject to later review, investigative, expert, or other services without prior authorization, if necessary for an adequate defense. The total cost of services obtained without prior authorization, however, may not exceed a maximum of \$150 and expenses reasonably incurred, and no greater

amount may be authorized regardless of the number of persons used or the character of services. A sworn application may be made by counsel to the judge or magistrate and for ratification of such expenses. Such expenditures without prior court authorization are not favored, and in addition to showing that such expenditures were "necessary for an adequate defense" and that the person was financially unable to obtain them, the application for ratification must show why prior authorization could not have been obtained.

**D. Necessity of Affidavit.**

The statements made by or on behalf of the party in support of the request under Subtitles A, B, or C, *supra*, shall be made either by affidavits sworn to before the clerk, or other appropriate officer, or under oath in open court before a judge or magistrate.

**VII. Compensation.**

**A. Federal Defender Program, Inc.**

FDP, a community defender service organization, shall receive such periodic sustaining grant as may be approved by the Judicial Conference of the United States from year to year based on the aggregate of cases and matters to be handled by FDP and its expenses over the period of the next ensuing year.

**B. Individual Payments to Counsel Appointed Under This Plan.**

Payment of fees and expenses to counsel appointed under this Plan, and payment for investigative, expert, and other services incurred pursuant to Title VI hereof, shall be made in accordance with such rules and regulations and guidelines, as have been or may be prescribed from time to time by the Judicial Conference of the United States, and in accordance with the fiscal policies of the Administrative Office of the United States Courts and the local rules of the district court.

**C. Schedule of Maximum Fees for Counsel and Other Services.**

The following fees are hereby prescribed for this district:

**1. Maximum Hourly Rate for Counsel.** The maximum hourly rate for attorneys for services performed on and/or after October 12, 1984, shall not exceed \$60 per hour for time expended in court, before a United States magistrate, and \$40 per hour for time reasonably expended out of court or a hearing. The maximum hourly rate for attorneys for services performed prior to October 12, 1984, shall not exceed \$30 per hour for time expended in court, before a United States magistrate, and \$20 per hour for time reasonably expended out of court or a hearing. In addition, however, such attorney or the organization furnishing such

attorney shall be reimbursed for expenses reasonably incurred, including the cost of any necessary transcripts authorized by the court or its magistrates.

**2. Maximum Amounts for Counsel.** For representation of a defendant before a magistrate or this court, or both, the maximum compensation to be paid to an attorney or to a bar association or legal aid agency or to the Community Defender Service, for services performed on and/or after October 12, 1984, shall not exceed \$2,000 for each attorney in a case in which one or more felonies are charged and \$800 for each attorney in a case in which only misdemeanors are charged. All claims submitted to or considered by the court or its magistrates on or after October 12, 1984, are subject to the new maximums provided that some portion of the claim is for services performed on and/or after October 12, 1984. Claims for services concluded before October 12, 1984, are subject to the prior case compensation maximums and, therefore, shall not exceed \$1,000 for each attorney in a case in which one or more felonies are charged and \$400 for each attorney in a case in which only misdemeanors are charged, even though the voucher covering such claims may have been submitted to or considered by the court or its magistrates on or after October 12, 1984. Representation of a defendant on a new trial shall be considered a separate case, and fees shall be paid on the same basis as on the original trial.

A maximum of \$500 per attorney is provided by any of the following representations:

- (a) a post-trial motion made after entry of judgment,
- (b) a probation revocation proceeding,
- (c) a parole revocation proceeding,
- (d) representing a material witness,
- (e) representing a person seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255,

and

18 U.S.C. § 4245.

**3. Maximum Compensation** to be paid on any case may also be governed by standards prescribed by local rules of the court.

**4. Waiving Maximum Counsel Fees.** Payment in excess of any maximum amount provided in Subparagraph 2 above, may be made for extended or complex representation whenever the court in which the representation was rendered or the magistrate, if the representation was furnished exclusively before him, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the Eleventh Judicial Circuit.

#### **D. Payment for Services Other than Counsel.**

**1. Previously Approved Services.** Where counsel has received prior authorization for services, the maximum which may be paid per person so authorized shall not exceed \$300, exclusive of reimbursement for expenses reasonably incurred, unless payment in



excess of that limit is certified by the court or by the magistrate (if the services were rendered in connection with a case disposed of entirely before him) as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the Eleventh Judicial Circuit.

**2. Services Furnished Without Prior Request.** The total cost of all services obtained without prior authorization may not exceed a total of \$150 and expenses reasonably incurred. Waiver of such limit is not provided for in this Plan.

**E. Payment to Standby Counsel.**

Appointment of standby counsel for *pro se* defendants will not be made and counsel will not be compensated under this Plan unless the defendant qualifies for appointed counsel and representation is actually rendered by counsel. Accordingly, if a *pro se* defendant agrees to be represented, at least in part, by standby counsel, compensation may be provided under this Plan. Similarly, if at any time during the course of the proceedings the services of standby counsel are accepted by the *pro se* defendant, a nunc pro tunc appointment order should be effected and counsel may be compensated under this Plan. However, in circumstances in which the appointment is made pursuant to the court's inherent authority, and counsel services exclusively on behalf of the court to protect the integrity and continuity of the proceedings, and does not represent the defendant, any compensation to be paid counsel shall be in the capacity of an "expert or consultant" pursuant to 5 U.S.C. § 3109. In such cases, compensation will be determined by the judicial officer in an amount not to exceed the compensation ceiling applicable to experts and consultants employed by the courts.

## **VIII. Forms.**

Where standard forms have been approved by the Judicial Conference of the United States or an appropriate committee thereof and have been distributed by the Administrative Office, such forms shall be used by the court, the clerk, the magistrates, FDP, and counsel. All CJA forms required to be prepared and submitted to the court or magistrate shall be filed by the appointed attorney with FDP for review and suggestions or discussions relative to the subject matter. After approval by FDP, such forms shall be forwarded to the court or magistrate.

Periodically in its administration of this plan, FDP is directed to inquire of appointed attorneys as to the status of cases, and to provide for the prompt submission of vouchers in all cases. In the event appointed counsel do not respond to such inquiries or fail to submit vouchers as required, FDP is directed to terminate such cases administratively.

## **IX. Effective Date.**

This plan was approved by the Judicial Council of the United States Court of Appeals for the Eleventh Circuit on March 11, 1988, and is, therefore, effective immediately. IT IS SO ORDERED, this 10th day of May, 1988.

WILLIAM C. O'KELLEY

*Chief United States District Judge*

RICHARD C. FREEMAN

*United States District Judge*

ORINDA D. EVANS

*United States District Judge*

HAROLD L. MURPHY

*United States District Judge*

ROBERT H. HALL

*United States District Judge*

MARVIN H. SHOOB

*United States District Judge*

HORACE T. WARD

*United States District Judge*

ROBERT L. VINING, JR

*United States District Judge*

J. OWEN FORRESTER

*United States District Judge*

G. ERNEST TIDWELL

*United States District Judge*

**JUDICIAL COUNCIL  
OF THE  
ELEVENTH JUDICIAL CIRCUIT**

The attached re-enactment of the Criminal Justice Act Plan for the United States District Court of the Northern District of Georgia, having been reviewed by the Judicial Council of the Eleventh Judicial Circuit, is approved.

Entered for the Judicial Council at. Atlanta, Georgia, this 2d day of November 1982.

On November 2, 1982, the following judges comprised the Judicial Council of the Eleventh Circuit.

John C. Godbold, Chief U.S. Circuit Judge

Paul H. Roney, U.S. Circuit Judge

Gerald Bard Tjoflat, U.S. Circuit Judge

James C. Hill, U.S. Circuit Judge

Peter T. Fay, U.S. Circuit Judge

Robert S. Vance, U.S. Circuit Judge

Phyllis A. Kravitch, U.S. Circuit Judge  
Frank M. Johnson, Jr., U.S. Circuit Judge  
Albert J. Henderson, U.S. Circuit Judge  
Joseph W. Hatchett, U.S. Circuit Judge  
R. Lanier Anderson, III, U.S. Circuit Judge  
Thomas A. Clark, U.S. Circuit Judge  
William Brevard Hand, Chief U.S. District Judge  
Anthony A. Alaimo, Chief U.S. District Judge  
William Terrell Hodges, U.S. District Judge

Thomas H. Reese  
Secretary

**BYLAWS OF  
FEDERAL DEFENDER PROGRAM, INC.  
ARTICLE I**

**Purpose**

The purpose of Federal Defender Program, Inc. is generally summarized as follows:

To act as the Community Defender Organization of the Northern District of Georgia, as provided for in 18 U.S.C.A. Section 3006A(2)(B), and to administer the Criminal Justice Act in and for said court and the court's Plan implementing said Act in the Northern District of Georgia as the same may be amended from time to time. In administering said Plan the corporation shall in its capacity as a community nonprofit defender organization be specifically responsible for furnishing attorneys and rendering services to persons entitled to representation and services under the Criminal Justice Act, as amended, and to receive payments under said Act.

Commensurate with the above responsibilities the corporation shall likewise administer a trial oriented clinical education program for selected law school students intended to interest and train future attorneys in the practice of criminal law thereby assuring continued availability of trial oriented criminal practitioners to represent the legally indigent. Funds other than those granted under the Criminal Justice Act will be used to support this program.

The corporation also has such powers as are now or may hereinafter be granted by the Georgia Nonprofit Corporation Code of the State of Georgia.

## **ARTICLE II**

### **Offices**

The corporation shall have and continuously maintain in this state a registered office and a registered agent whose office is identical with such registered office, and may have other offices within or without the State of Georgia as the Board of Directors may from time to time determine.

## **ARTICLE III**

### **Board of Directors**

SECTION 1. GENERAL POWERS. The Board of Directors shall have the responsibility to manage and direct the property, affairs, and business of the corporation, including the furnishing of counsel in criminal cases as provided for in the court's Plan and the training of law students.

SECTION 2. NUMBER, TENURE AND QUALIFICATIONS. The number of Directors shall be a maximum of twenty and a minimum of ten persons. The president, vice president, secretary and treasurer of the corporation shall serve as ex-officio members of the Board of Directors. All terms of membership shall be as indicated by order of the Judges of the United States District Court for the Northern District of Georgia.

SECTION 3. ELECTION OF DIRECTORS. The initial Board of Directors and its Chairman are to be selected by the unanimous vote of all the judges of the United States District Court for the Northern District of Georgia. Thereafter members of the Board of Directors will be elected by a majority vote of all the judges of the United States District Court for the Northern District of Georgia.

SECTION 4. VOTING RIGHTS. Each Director shall be entitled to one vote on each matter submitted to a vote of the Directors.

SECTION 5. RESIGNATION. Any Director may resign by filing a written resignation with the Secretary.

## **ARTICLE IV**

## **Meetings of the Board of Directors**

SECTION 1. ANNUAL MEETING. An annual meeting of the Board of Directors shall be held on the first Thursday in October (or subject to appropriate notice, at any, alternate approximate date), for the purpose of installing officers and for the transaction of such other business as may come before the meeting. If such day be a legal holiday, the meeting shall be held at the same hour on the next succeeding business day.

SECTION 2. QUARTERLY AND SPECIAL MEETINGS. Quarterly Meetings of the Board of Directors shall be held on the first Thursday in January, April, July and October and Special Meetings may be called at any time either by the president or by not less than one-tenth of the Directors having voting rights.

SECTION 3. PLACE OF MEETING. The Board of Directors may designate any place, either within or without the State of Georgia, as the place of meeting for an annual meeting, quarterly meeting or any special meeting called by the Board of Directors. If no designation is made, the place of meeting shall be the offices of the Corporation, provided, however, that if all of the members shall meet at any time and place, either within or without the State of Georgia, and. consent to the holding of a meeting, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

SECTION 4. NOTICE OF MEETINGS. Written or printed notice stating the place, day and hour of any meeting of Directors shall be delivered, either personally or by mail, to each Director entitled to vote at such meeting, not less than five nor more than forty days before the day of such meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute or by these bylaws, the purpose for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

SECTION 5. MANNER OF ACTING. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, except where otherwise provided by law or by these bylaws.

SECTION 6. INFORMAL ACTION BY DIRECTORS. Any action required to be taken at a meeting of the Directors of the corporation, or any other action which may be taken at a meeting of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof, or such action may be taken by the Executive Committee of the Board of Directors.

SECTION 7. QUORUM. The Directors holding one-third of the votes which may be cast at any meeting shall constitute a quorum at such meeting. If a quorum is not present at any meeting of Directors, a majority of the Directors present may adjourn the meeting from time to time without further notice.

SECTION 8. COMPENSATION. Directors as such shall not receive any stated salaries for their services.

SECTION 9. VACANCIES. Any vacancy occurring in the Board of Directors or any directorship to be filled by reason of an increase in the number of Directors, shall be filled by majority vote of all the judges of the United States District Court for the Northern District of Georgia. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

## **ARTICLE V**

### **Officers**

SECTION 1. OFFICERS. The officers of the corporation shall be a president who shall serve as Chairman of the Board, a First Vice President who shall serve as President elect, one or more other vice presidents (the number thereof to be determined by the Board of Directors), a treasurer, a secretary and such other officers as may be elected in accordance with the provisions of this Article. The Board of Directors may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two or more offices may be held by the same person, except the offices of president and secretary.

SECTION 2. EXECUTIVE DIRECTOR. The Directors shall employ an Executive Director who shall have the general responsibility of carrying out the purposes and business of the corporation subject to approval and direction from the Board of Directors.

SECTION 3. ELECTION AND TERM OF OFFICE. The officers shall be elected annually by the Board of Directors at its July quarterly meeting and installed at its regular annual meeting. If the election of officers shall not be held at such meeting, such election shall be held as soon as convenient thereafter. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and shall have qualified.

SECTION 4. REMOVAL. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the corporation would be served thereby.

SECTION 5. VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

SECTION 6. PRESIDENT. The president shall be the principal executive officer of the corporation and Chairman of the Board of Directors and shall in general supervise and control all of the business and affairs of the corporation as authorized by the Board of Directors. He may sign, with the secretary or any other proper officer of the corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these bylaws or by statute to some other officer or, agent of the corporation; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

SECTION 7. VICE PRESIDENT. In the absence of the president or in the event of his inability or refusal to act, the vice president (or in the event there be more than one vice president, the vice presidents in the order designated, or in the absence of any designation, then in the order of their elections) shall perform the duties of the president, and when so, acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned to him by the president or by the Board of Directors.

SECTION 8. TREASURER. If required by the Board of Directors, the treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine. He shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VII of these bylaws; and in general perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the president or by the Board of Directors.

SECTION 9. SECRETARY. The secretary shall keep the minutes of the meetings of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of the corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member which shall be furnished to the secretary by such member; and in general perform all duties incident to the office of

secretary and such other duties as from time to time may be assigned to him by the president or by the Board of Directors.

SECTION 10. ASSISTANT TREASURERS AND ASSISTANT SECRETARIES. If required by the Board of Directors, the assistant treasurers shall give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine. The assistant treasurers and assistant secretaries, in general, shall perform such duties as shall be assigned to them by the treasurer or the secretary or by the president or the Board of Directors.

## **ARTICLE VI**

### **Committees**

SECTION 1. EXECUTIVE COMMITTEE. The officers of the corporation shall act as an Executive Committee. The Chairman of the Board of Directors shall serve as Chairman of the Executive Committee. The Executive Committee shall have and exercise the full and complete authority of the Board of Directors in the management of the corporation between meetings of the Board. A majority of the Executive Committee shall constitute a quorum.

SECTION 2. COMMITTEES OF DIRECTORS. The Chairman of the Board of Directors may designate one or more committees, each of which shall consist of two or more Directors.

SECTION 3. TERM OF OFFICE. Each member of a committee shall continue as such until the next annual meeting of the Directors of the corporation and until his successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

SECTION 4. CHAIRMAN. One member of each committee shall be appointed chairman.

SECTION 5. VACANCIES. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

SECTION 6. INFORMAL ACTION BY COMMITTEES. Any action required to be taken at a meeting of a committee or any other action which may be taken at a meeting of a committee may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all the members of the committee entitled to vote with respect to the subject matter thereof.

SECTION 7. RULES. Each committee may adopt rules for its own government not inconsistent with these bylaws or with rules adopted by the Board of Directors.



## **ARTICLE VII**

### **Contracts, Checks, Deposits and Funds**

SECTION 1. CONTRACTS. The Board of Directors may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation and such authority may be general or confined to specific instances.

SECTION 2. CHECKS, DRAFTS, ETC. All checks, drafts or other order for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation, shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors such instruments shall be signed by the president, a vice president, or the treasurer or an assistant treasurer of the corporation.

SECTION 3. DEPOSITS. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board of Directors may select.

SECTION 4. GIFTS. The Board of Directors may accept on behalf of the corporation any contribution, gift, bequest or devise for the general purpose or for any special purpose of the corporation.

SECTION 5. INDEMNIFICATION OF OFFICERS AND DIRECTORS. The corporation shall indemnify the Directors and officers of the corporation and may purchase and maintain liability insurance on their behalf under the conditions of, to the extent provided in, and subject to the limitations of Sections 22-2261 and 22-717 of the Georgia Code Annotated.

## **ARTICLE VIII**

### **Certificates of Membership**

SECTION 1. CERTIFICATES OF MEMBERSHIP. The Board of Directors may provide for the issuance of certificates evidencing membership on the Board of Directors of the corporation which shall be in such form as may be determined by the Board. Such certificates shall be signed by the president or a vice president and by the secretary or an

assistant secretary and shall be sealed with the seal of the corporation. All certificates evidencing membership shall be consecutively numbered. The name and address of each Director and the date of issuance of the certificate shall be entered on the records of the corporation.

SECTION 2. ISSUANCE OF CERTIFICATES. When a Director has been elected to membership as a Director, a certificate of membership shall be issued in his name and delivered to him by the secretary, if the Board of Directors shall have provided for the issuance of certificates of membership under the provisions of Section 1 of this Article.

## **ARTICLE IX**

### **Books and Records**

The corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of the Board of Directors and committees having any of the authority of the Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the Directors entitled to vote. All books and records of the corporation may be inspected by any Director, or his agent or attorney, for any proper purpose at any reasonable time. There shall be an annual audit of the books of the corporation by a certified public accountant.

## **ARTICLE X**

### **Fiscal Year**

The fiscal year of the corporation shall begin on the first day of October and end on the last day of September in each year.

## **ARTICLE XI**

### **Seal**

The Board of Directors shall provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Georgia."

## **ARTICLE XII**

### **Waiver of Notice**

Whenever any notice whatever is required to be given under the provisions of the Nonprofit Corporation Code of Georgia or under the provisions of the Articles of Incorporation or by the bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent to the giving of such notice.

## **ARTICLE XIII**

### **Amendments to Bylaws**

These bylaws may be altered, amended, or repealed and new bylaws may be adopted at any meeting of the Directors provided that ten (10) days' notice of such meeting specifying the substance of any such proposed changes in the bylaws has been given to all the Directors.